IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1475 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MADHUKAR HARISHANKER TRIPATHI

Versus

AHMEDABAD MUNICIPAL CORPORATION

Appearance:

1. First Appeal No. 1475 of 1982

MR RN SHAH for Petitioner No. 1

MS TANUJA KACHCHI FOR MR MG NAGARKAR for Respondent No.1

MR SN SHELAT for Respondent No. 2

NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 10/01/2002

ORAL JUDGEMENT

1. Challenge in this appeal is the judgment and decree dated December 23, 1981 passed in Civil Suit No.

168 of 1978 by the learned Judge, 4th Court of the City Civil Court, Ahmedabad whereby the suit filed by appellant, who is the original plaintiff, came to be dismissed.

2. Appellant has been serving in the Municipal School Board since a number of years. He was promoted vide order dated August 30, 1974 as Assistant Administrative Officer. Respondent No.3, Administrative Officer, served upon the appellant a charge-sheet dated November 17, 1976 wherein several allegations including dereliction of duty, neglecting work, not attending to the duty punctually, exercising powers not vested in him and misusing the powers, etc., were levelled against him. By order dated December 31, 1976, respondent No.3 appointed one Mr. A.G. Shaikh as an inquiry officer to hold inquiry in respect of the charges levelled against the appellant. During the inquiry, the said charges were proved and, therefore, the inquiry officer submitted his report on May 17, 1977 to respondent No.3 and on the said report respondent No.3 tentatively agreed with the finding of the inquiry officer and issued show cause notice for proposed punishment to the appellant and after considering the reply of the appellant to the show cause notice vide order dated November 28, 1977 reverted the appellant from the post of Assistant Administrative Officer to his original post of Supervisor and respondent No.2, Municipal School Board, further ordered that the appellant should not be given promotion for three years.

3. Aggrieved by the said finding and order of punishment, the appellant filed a suit challenging the order dated November 28, 1977 passed by respondent No.3. It was contended in the plaint by the appellant that the said order was malicious and it was passed against him with a view to harass him as he was not amenable to the illegal order of his superior. It was also contended that the Administrative Officer who issued charge-sheet was not the competent authority so far as the appellant was concerned as the appellant was an employee of the Municipal Corporation governed by the provisions of the Bombay Provincial Municipal Corporations Act, 1949 and, therefore, he was entitled to the protection of the provisions conferred under the said Act and since the said provisions were not followed by the competent authority, inquiry held against him was vitiated. It was also alleged that the inquiry was held almost exparte. According to the appellant, respondent No.3 had no power to delegate any authority to Mr. Shaikh to hold any inquiry. It was also alleged that the inquiry officer had not summoned some of the persons named by the

appellant like Administrative Officer, Deputy Administrative Officer and the retired Office Superintendent to examine as witnesses. It was also alleged that the principles of natural justice were not observed while conducting the inquiry and, therefore, by filing the suit the appellant prayed for declaration that the said inquiry and the final order is illegal and void. The appellant also prayed to declare that he continues in service on the post of Assistant Administrative Officer. The appellant also prayed for a decree for the difference of salary with 12% interest on it from the respondents.

4. The respondents appeared and contested the suit by filing written statement at Ex.14 denying the allegation of malafide, violation of principles of natural justice, etc. According to the respondents, the appellant had preferred an appeal against the impugned order passed on basis of the inquiry and that appeal, except for a small modification in the period of promotional bar, was dismissed and the period of promotional bar was reduced to two years from three years and, therefore, the suit wherein the challenge was made against the order dated November 28, 1977 reverting the appellant from the post of Assistant Administrative Officer to his original post of Supervisor was not maintainable. It was also denied that Mr. AG Shaikh was not a proper officer to hold inquiry since he was an Assistant Administrative Officer and was of the same rank of the appellant. So far as the allegation with respect to non-summoning of the witnesses was concerned, the same was denied. According to the respondents, the inquiry officer had no power to compel the attendance of witnesses and the inquiry authority was not responsible if the persons summoned did not remain present before the inquiry officer. Lastly it was contended that as an exhaustive procedure of inquiry and appeal has been provided for in the Education Act and the Rules, the Civil Court will have no jurisdiction to hear and decide the suit and ultimately urged to dismiss the suit.

5. On the pleadings of the parties, learned predecessor-in-office of the trial Judge had framed issues at Ex.18.

6. The parties have not led any oral evidence. The respondents have produced the entire record of the inquiry held against the appellant before the Court. The learned trial Judge on appreciation and evaluation of the evidence produced before him and the submissions advanced at the bar by the learned advocates appearing for the parties, came to the conclusion that the Civil Court has

jurisdiction to try and decide the suit and further held that the inquiry held against the appellant was not illegal and it was binding to the appellant. Resultantly, the learned trial Judge has dismissed the suit leaving the parties to bear their own costs. It is this judgment and decree by which the appellant's suit came to be dismissed is on the anvil before this Court in this appeal filed under section 96 of the Code of Civil Procedure ('the Code' for short).

7. Mr. R.N. Shah, learned advocate for the appellant, contended that the order dated November 28, 1977 passed by respondent No.3 by which the appellant was reverted from the post of Assistant Administrative Officer to the post of Supervisor was not proper in view of the fact that the charges levelled against him are very general in nature. What is stressed by the learned counsel is that the officer who issued the charge-sheet to the appellant was not the competent authority and therefore also the order passed for holding departmental inquiry was vitiated. It is emphatically contended by the learned counsel that appointment of Mr. Shaikh as inquiry officer was not proper inasmuch as the appellant was working as Assistant Administrative Officer and the inquiry officer Mr. Shaikh was also an Assistant Administrative Officer who was junior to the appellant. Lastly it is contended by the learned counsel that the inquiry officer had not summoned some of the persons named by the appellant like Administrative Officer, Deputy Administrative Officer, retired Office Superintendent and, therefore, principles of natural justice were violated while conducting inquiry and therefore also the inquiry was bad in law. On the aforesaid premises, the learned counsel urged that the judgment and decree of dismissal of the suit is bad in law which is required to be quashed and set aside by allowing the appeal and thereby to allow the suit by granting prayer as prayed for in the plaint.

8. Ms. Tanuja Kachchi, learned advocate for respondent No.1, supported the judgment of the trial court throughout. She contended that though the inquiry officer appointed to hold inquiry against the appellant was of equal rank of the appellant he conducted the inquiry in accordance with law by following the rules and regulations of the Education Act as well as the Rules. She has also contended that the officer who issued the charge-sheet was the competent authority to issue charge-sheet. She has maintained that the inquiry officer was not bound to summon irrelevant persons as witnesses though the inquiry officer in this case had

issued summons to all the persons named by the appellant but some of them remained absent for which the inquiry officer cannot be blamed saying that he had not followed the principles of natural justice. She, therefore, urged that there is no substance in this appeal and therefore same deserves to be dismissed with costs and thereby to confirm the judgment and decree which is impugned under appeal.

9. I have considered the submissions advanced by the learned advocates for the parties. I have perused the judgment and award impugned in this appeal and also the evidence produced on the record of the case.

10. At the outset it may be appreciated that there is a provision to file departmental appeal against the order passed by the inquiry officer under various provisions of the Education Act and the Rules. There is catena of decisions that finding recorded in departmental inquiry can be challenged in a suit or in a petition filed under Article 226 of the Constitution provided that the finding recorded by the inquiry officer is based on irrelevant consideration or misappreciation of evidence. Therefore the scope of judicial review is limited and neither the High Court nor the Civil Court can sit in appeal over the finding recorded by the inquiry officer in a departmental inquiry. However, in a given case High Court or Civil Court can interfere if the penalty imposed is disproportionate to the guilt of the delinquent and shocks and conscience of the Court. Therefore, in my view, the learned trial Judge has very rightly held that the Civil Court has jurisdiction to decide the suit.

11. The first contention of Mr. Shah that reversion of the appellant from the post of Assistant Administrative Officer to his original post of Supervisor in view of the fact that the charges levelled against him were proved was not proper, has no substance. It may be noted that the appellant was charged with the allegations of dereliction of duty, neglecting work, not attending to the duty punctually, exercising powers not vested in him and misusing the powers, etc., and they were proved. The inquiry officer Mr. Shaikh examined witnesses and on proof thereof he came to the finding that charges levelled against the appellant were proved and therefore respondent No.3 tentatively agreed with the said findings and issued show cause notice for the proposed punishment. On considering the reply given by the appellant, respondent No.3, Administrative Officer reverted him whereas respondent No.2 had passed a further order that the appellant should not be given promotion for three

years. The appellant had challenged this order. The appellant had simultaneously filed departmental appeal against the said order and in the said appeal order of promotional bar was modified by reducing to two years from three years. Therefore the appellant ought to have challenged the appellate order before the Civil Court as during the pendency of the Civil Suit the said order was passed by the appellate authority. However, the appellant elected not to amend the plaint and therefore the learned trial Judge has very rightly held that the order passed by respondent No.3 was merged into the appellate order and the appellant is not entitled to any relief as prayed for in the suit. It is settled position of law and there is catena of decisions about doctrine of merger and according to it, the order of the lower authority shall merge with the order of appellate authority.

12. The second contention that the officer who issued charge-sheet to the appellant was not the competent authority, therefore, inquiry was vitiated has also no substance. The learned trial Judge has very exhaustively considered the relevant provisions of the Education Act and the Rules in paras 13 and 14 of his judgment and more particularly in view of section 21 of the Education Act the Administrative Officer is the Chief Executive Officer of the Board having powers and duties as may be prescribed. Therefore, the Administrative Officer has got power to make appointment as well as to impose punishment. By virtue of section 22 the authorized municipality can appoint administrative officer and by virtue of Section 24 the Administrative Officer can exercise powers over the School Board staff. Therefore, the learned trial Judge has rightly held that the Administrative Officer has right to issue charge-sheet to the appellant and since I am in complete agreement with the finding recorded by the learned trial Judge in this regard, the said contention advanced by Mr. Shah is rejected.

13. The third contention of Mr. Shah that Mr. Shaikh was not a proper officer to hold departmental inquiry against the appellant as he was also an Assistant Administrative Officer which was the same rank of the appellant and he was junior to the appellant has also no substance. It appears from the provisions of the Education Act and the rules that the Assistant Administrative Officer is an officer next below in rank to the Administrative Officer. The proviso attached to clause (b) of sub-rule (2) of Rule 63 makes it clear that when an inquiry has to be held in the conduct of a staff

member, the Administrative Officer may, himself hold the same or may authorize any other person, to hold such an inquiry. In view of the aforesaid statutory provisions, there was no bar to appoint Mr. Shaikh to conduct the inquiry against the appellant. Therefore, this contention of Mr. Shah is also devoid of merit and is rejected.

14. The last contention of Mr. Shah that the inquiry officer had not summoned some of the persons named by the appellant like Administrative Officer, Deputy Administrative Officer and retired Office Superintendent has also no substance. It may be noted that the proceedings of departmental inquiry are quasi judicial proceedings and therefore strict proof of evidence cannot be adhered to. If names of irrelevant persons are given by the delinquent to examine them as witnesses it is not necessary for the inquiry officer to summon them. However, in the instant case the inquiry officer had summoned the persons named by the appellant but they did not turn up. Besides this, the record shows that the inquiry officer had asked the appellant as to what was the relevance of the evidence of those witnesses but the appellant was not in a position to satisfy the inquiry officer about the relevance and real need of summoning those officers and, therefore, the inquiry officer did not summon them.

15. It is well settled principle that appreciation of evidence is within the purview of the domestic tribunal and the civil court cannot sit in appeal over such appreciation of evidence in the suit. The civil court also cannot go into the question of sufficiency of evidence. The only ground on which the civil court can enter into the grievance against the order of the domestic tribunal is that the order was passed on no evidence. It is not the case in this case that there was no evidence. Several documents were produced and several witnesses were examined and several documents received in evidence were considered by the inquiry officer and the inquiry officer after giving sufficient opportunity to the appellant to defend his case found him guilty of the charges levelled against him. The competent authority, that is, respondent No.3 before imposing punishment had also issued show cause notice and after considering the reply submitted by the appellant imposed the punishment on him.

16. In view of the aforesaid state of affairs, I am of the opinion that there is no infirmity or illegality in conducting the departmental inquiry and therefore the

learned trial Judge has very rightly dismissed the suit.

17. Seen in the above context, there is absolutely no merit in this appeal which is deserved to be dismissed.

18. For the foregoing reasons, the appeal fails and accordingly it is dismissed with no order as to costs.

(A.M. Kapadia, J.)